

**PATENT****Application # 10/064,251****Attorney Docket # 2001-0337 (1014-284)****REMARKS**

Applicant respectfully thanks the Examiner for the consideration provided to this application, and respectfully requests reconsideration of this application.

Each of claims 1, 10, and 18 has been amended for at least one reason unrelated to patentability, including at least one of: to explicitly present one or more elements, limitations, phrases, terms and/or words implicit in the claim as originally written when viewed in light of the specification, thereby not narrowing the scope of the claim; to detect infringement more easily; to enlarge the scope of infringement; to cover different kinds of infringement (direct, indirect, contributory, induced, and/or importation, etc.); to expedite the issuance of a claim of particular current licensing interest; to target the claim to a party currently interested in licensing certain embodiments; to enlarge the royalty base of the claim; to cover a particular product or person in the marketplace; and/or to target the claim to a particular industry. Support in the specification for amendments to each of claims 1 and 10 can be found in the application as originally submitted at least at paragraphs 45 and 46. It is respectfully submitted that no new matter has been added.

Claims 1-20 are now pending in this application. Each of claims 1, 6, and 10 are in independent form.

**I. No Grounds of Rejection Presented Regarding Claims 14 or 15**

The MPEP states that where "a claim is refused for any reason relating to the merits thereof it should be 'rejected' and the ground of rejection fully and clearly stated." See MPEP 707.07(d). The present Office Action fails to comply with this standard with respect to at least each of claims 14 and 15 since the Office Action fails to provide any grounds of rejection whatsoever regarding the subject matter of either of these claims.

The present Office Action purports, at the "Office Action Summary" page, to reject each of claims 14 and 15. Yet the remainder of the Office Action is silent regarding the claimed subject matter of each of claims 14 and 15.

Specifically, claim 14 states, *inter alia*, yet the applied portions of the relied-upon references do not teach, "resolving a determined label contention associated with normalizing the

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connection via a downstream label assignment for a uni-directional Label Switched Path". For at least this reason, it is respectfully submitted that the rejection of claim 14 is unsupported by any applied portion of any relied-upon reference and should be withdrawn.

Claim 15 states, *inter alia*, yet the applied portions of the relied-upon references do not teach, "resolving a determined label contention associated with normalizing the connection via a higher node identification label assignment for a bi-directional Label Switched Path". For at least this reason, it is respectfully submitted that the rejection of claim 15 is unsupported by any applied portion of any relied-upon reference and should be withdrawn.

**II. The Anticipation Rejections**

Each of claims 1 and 18 was rejected as anticipated under 35 U.S.C. 102(b). In support of the rejection, various portions of U.S. Patent No. 7,039,009 ("Chaudhuri") were applied. These rejections are respectfully traversed as moot in view of the present amendments to claim 1.

Specifically, claim 1, from which claim 18 depends, states, *inter alia*, yet Chaudhuri does not teach, "responsive to a determination that the label switched path has been normalized back to the service path, sending a release request to a plurality of nodes along the restoration path, the release request adapted to cause a release of a restoration path resource allocation, the label switched path normalized responsive to a repair of a failure of at least one component comprised by the service path, the release request comprising a shared reservation flag adapted to cause the release of the restoration path resource allocation without causing a release of reserved resources associated with the restoration path and without causing a removal of the restoration path.

For at least this reason, it is respectfully submitted that the rejection of claim 1 is unsupported by Chaudhuri and should be withdrawn. Also, the rejection of claim 18, which depends from claim 1, is unsupported by Chaudhuri and also should be withdrawn.

**III. The Obviousness Rejections**

Each of claims 1-13 and 16-20 was rejected under 35 U.S.C. 103(a) as being unpatentable over various combinations of U.S. Patent No. 20010032271 ("Allen"), U.S. Patent No. 20020191247 ("Lu"), U.S. Patent No. 6,741,572 ("Graves"), U.S. Patent No. 6,442,132

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("Burns"), U.S. Patent No. 20010036153 ("Sasaki"), and/or U.S. Patent No. 7,099,327 ("Nagarajan"). Each of these rejections is respectfully traversed.

**A. Legal Standards****1. *Prima Facie* Criteria for an Obviousness Rejection**

Over 40 years ago, in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), the Supreme Court established factors regarding the factual inquiry required to establish obviousness. The factors include:

1. determining the scope and contents of the prior art;
2. ascertaining differences between the prior art and the claims at issue;
3. resolving the level of ordinary skill in the pertinent art; and
4. considering objective evidence indicating obviousness or nonobviousness.

The Federal Circuit has applied *Graham's* required factual inquiry in numerous legal precedents that are binding on the USPTO.

It is recognized that most patentable inventions arise from a combination of old elements and often, each element is found in the prior art. *In re Rouffet*, 149 F.3d 1350, 1357 (Fed. Cir. 1998). The United States Supreme Court clarified the obviousness inquiry criteria in *KSR International Co. v. Teleflex Inc.*, 2007 U.S. LEXIS 4745 (2007). The KSR Court held:

1. "[t]he question is not whether the combination was obvious to the patentee but whether the combination was obvious to a person with ordinary skill in the art";
2. "a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art";
3. it is necessary "to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. To facilitate review, this analysis should be made explicit"; and
4. "[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational

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underpinning to support the legal conclusion of obviousness" (quoting *In re Kahn*, 441 F. 3d 977, 988 (Fed. Cir. 2006)).

In order to establish a *prima facie* case of obviousness, certain criteria must be met. Evidence must be provided that indicates that the combination was obvious to a person with ordinary skill in the art. *KSR International Co. v. Teleflex Inc.*, 2007 U.S. LEXIS 4745 (2007); *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). The evidence must include an apparent reason, with a rational underpinning, to combine the known elements in the fashion claimed in the patent at issue. *KSR International Co. v. Teleflex Inc.*, 2007 U.S. LEXIS 4745 (2007). There must be a reasonable expectation of success. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); MPEP 2143. In addition, the prior art reference (or references when combined) must teach... all the claim limitations. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); MPEP 2143.

Moreover, the "Patent Office has the initial duty of supplying the factual basis for its rejection." *In re Warner*, 379 F.2d 1011, 154 USPQ 173, 178 (CCPA 1967), cert. denied, 389 U.S. 1057, *reh'g denied*, 390 U.S. 1000 (1968). "It may not... resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in its factual basis". *Id.*

It is legal error to "substitute[] supposed *per se* rules for the particularized inquiry required by section 103. It necessarily produces erroneous results." See, *In re Ochiai*, 71 F.3d 1565, 1571, 37 USPQ2d 1127, 1132-33 (Fed. Cir. 1998); *In re Wright*, 343 F.2d 761, 769-770, 145 USPQ 182, 190 (CCPA 1965).

"Once the examiner... carries the burden of making out a *prima facie* case of unpatentability, 'the burden of coming forward with evidence or argument shifts to the applicant.'" *In re Alton*, 76 F.3d 1168, 37 USPQ2d 1578 (Fed. Cir. 1996) (quoting *In re Oetiker*, 977 F.2d at 1445, 24 USPQ2d at 1444).

## 2. All Words in a Claim Must Be Considered

"To establish *prima facie* obviousness..., '[a]ll words in a claim must be considered....'" MPEP 2143.03, quoting *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970); see also, *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974); *In re Wilder*, 429 F.2d 447,

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166 USPQ 545, 548 (CCPA 1970); *In re Angstadt*, 537 F.2d 498, 190 USPQ 214, 217 (CCPA 1976); *In re Geerdes*, 491 F.2d 1260, 180 USPQ 789, 791 (CCPA 1974).

**3. Inherency**

Inherency "requires that the missing descriptive material is 'necessarily present,' not merely probably or possibly present, in the prior art." *Trintec Indus., Inc. v. Top-U.S.A. Corp.*, 295 F.3d 1292, 1295, 63 USPQ2d 1597, 1599 (Fed. Cir. 2002).

**4. Unfounded Assertions of Knowledge**

A bald assertion of knowledge generally available to one of ordinary skill in the art to bridge the evidentiary gap is improper. Such unfounded assertions are not permissible substitutes for evidence. *See, In re Lee*, 277 F.3d 1338, 1435, 61 USPQ2d 1430, 1435 (Fed. Cir. 2002). That is, deficiencies of the cited references can not be remedied by general conclusions about what is basic knowledge or common sense to one of ordinary skill in the art. *In re Zurko*, 258 F.3d 1379, 1385-86 (Fed. Cir. 2001).

**5. Evidence of Obviousness – Combination of References**

Under the *Graham* analysis, the "examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness." MPEP 2142. The requirements for meeting this burden are clear.

To factually support a *prima facie* conclusion of obviousness, an Office Action must provide evidence that indicates that the combination was obvious to a person with ordinary skill in the art. The evidence must include an apparent reason, with a rational underpinning, to combine the known elements in the fashion claimed in the patent at issue. "[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness" *KSR International Co. v. Teleflex Inc.*, 2007 U.S. LEXIS 4745 (2007) (quoting *In re Kahn*, 441 F. 3d 977, 988 (Fed. Cir. 2006).

**PATENT****Application # 10/064,251****Attorney Docket # 2001-0337 (1014-284)****B. Analysis****1. Claims 1-5**

Applicant respectfully traverses each rejection of claims 1-5 and 16-20 as moot in view of the present amendments to claim 1.

As stated, *supra*, claim 1, from which each of claims 2-5 and 16-20 ultimately depends, states, *inter alia*, yet the applied portions of the relied-upon references do not teach, “responsive to a determination that the label switched path has been normalized back to the service path, sending a release request to a plurality of nodes along the restoration path, the release request adapted to cause a release of a restoration path resource allocation, the label switched path normalized responsive to a repair of a failure of at least one component comprised by the service path, the release request comprising a shared reservation flag adapted to cause the release of the restoration path resource allocation without causing a release of reserved resources associated with the restoration path and without causing a removal of the restoration path”. For at least this reason, it is respectfully submitted that the rejection of claim 1 is unsupported by the applied portions of the relied-upon references and should be withdrawn. Also, the rejection of claims each of claims 2-5 and 16-20, each of which ultimately depends from claim 1, is unsupported by the applied portions of the relied-upon references and also should be withdrawn.

**2. Claim 6****a. *Prima Facie* Criteria**

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

**b. Missing Claim Limitations**

Claim 6 states, *inter alia*, yet the applied portions of the relied-upon references do not teach, “the second message comprising an object that comprises a code, a first possible value of the code indicative that bridging has been completed, a second possible value of the code indicative that a roll/bridge has been completed, a third possible value of the code indicative that a roll has been completed”.

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Thus, even if there were proper evidence of obviousness presented in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in modifying the applied portions of reference relied upon in the Office Action (another assumption that is respectfully traversed), the applied portions of the reference relied upon in the Office Action, **as attempted to be modified**, still do not expressly or inherently teach every limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

**c. The Unfounded Assertions Fail to Bridge the Missing Claim Limitations**

Regarding the admittedly missing claimed subject matter of claim 6, the present Office Action asserts, at Page 7, "[t]his is strictly an implementation issue since Burns teaches messages are exchanged between the source and the destination during a bridge-and-roll operation, which is identical to the steps described in Paragraph 47 of Applicant's specification". As an initial matter, Applicant respectfully traverses this assertion as without any evidentiary basis. In addition, the reliance by the Office Action on such an unfounded assertion to bridge the evidentiary gap posed by the applied portions of the relied-upon references is improper. Such unfounded assertions are not permissible substitutes for evidence.

**d. Inadequate Evidence of Obviousness**

Applicant respectfully notes that the present Office Action fails to evidence the scope and contents of the prior art and identify the scope and contents to Applicant as required under *Graham*. The present Office Action also fails to even identify what "the pertinent art" is and notably fails to resolve the level of ordinary skill in the pertinent art. In addition, no evidence is presented that the present Office Action has considered objective evidence indicating obviousness or nonobviousness.

Applicant respectfully traverses the failure of the present Office Action to comply with the requirements of *Graham* and respectfully requests a withdrawal of the rejection of claim 6 or a non-final Office Action that complies therewith.

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## e. Conclusion

Because no *prima facie* rejection has been presented, Applicant respectfully requests a reconsideration and withdrawal of the rejection of claim 6. Applicant also requests a reconsideration and withdrawal of each rejection of each of claims 6-9, each of which ultimately depends from claim 6.

## 3. Claim 7

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness. Among other things, the present Office Action fails to provide proper evidence of obviousness as required under *KSR*.

Instead, regarding the proffered combination of Burns, Sasaki, and Kim, no evidence is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references are used in rejecting claim 7 in such a manner so as to arrive at the claimed subject matter of claim 7. Regarding the proffered combination of Burns, Sasaki, and Kim the present Office Action asserts, at Page 9:

[i]t would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the combination of Burns' and Sasaki's method to incorporate a method wherein the messages are RSVP messages. The motivation being to keep the link state information kept in the database of each node up to date and to provide a means to inform each node a feedback to indicate if the path has been setup or not as RSVP messages has such capability.

Applicant respectfully submits that this unsupported assertion provides no evidence of, from the perspective of one of ordinary skill in the art, a "rational underpinning, to combine the known elements in the fashion claimed in the patent at issue". Applicant reiterates that under *KSR* "rejections on obviousness grounds cannot be sustained by mere conclusory statements".



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Thus, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 7. Accordingly, Applicants respectfully request withdrawal of the rejection of claim 7.

**4. Claim 9**

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness. Among other things, the present Office Action fails to provide proper evidence of obviousness as required under *KSR*.

Instead, regarding the proffered combination of Burns, Sasaki, and Nagarajan, inadequate evidence is provided regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references are used in rejecting claim 9 in such a manner so as to arrive at the claimed subject matter of claim 9. Regarding the proffered combination of Burns, Sasaki, and Kim the present Office Action asserts, at Page 10:

[i]t would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Burns' and Sasaki's method to incorporate a method based on LMP. The motivation being Link Management Protocol (LMP) is ideal and optimal for using it in Optical Networks to compute the optical path as illustrated in Nagarajan's Column 3:63-67.

Yet this applied portion of Nagarajan does not support this assertion and merely states:

[i]llustratively, two diverse paths are computed. In step 505, the OTN topology is identified in each DCN node. (For optical path computation purposes, OTN topology information is passed to each DCN node through a link state 65 exchange protocol as known in the art (e.g., the Link Management Protocol (LMP)).

Applicant respectfully submits that this applied portion of Nagarajan does not state that "Link Management Protocol (LMP) is ideal and optimal for using it in Optical Networks to compute the optical path" as asserted by the present Office Action. Applicant respectfully submits that the generally unsupported assertion of the present Office Action provides insufficient

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evidence of, from the perspective of one of ordinary skill in the art, a “rational underpinning, to combine the known elements in the fashion claimed in the patent at issue”. Applicant reiterates that under *KSR* “[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements”.

Thus, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 9. Accordingly, Applicants respectfully request withdrawal of the rejection of claim 9.

**5. Claim 10****a. *Prima Facie* Criteria**

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

**b. Inherency**

Claim 10 states, *inter alia*, yet the applied portions of the relied-upon references do not teach, “if a third message is received from the source node confirming that the connection has been normalized, sending a fourth message along the restoration path freeing resources reserved for the restoration path”.

The present Office Action states, at Page 7, (emphasis added) “Burns also inherently teaches sending a fourth message along the restoration path freeing resources reserved for the restoration path. (See Column 4:18-19)”.

Yet the applied portion of Burns does not evidence that the admittedly “missing descriptive material is ‘necessarily present’”. Applicant respectfully requests provision of evidence supporting the assertion, “Burns also inherently teaches sending a fourth message along the restoration path freeing resources reserved for the restoration path.”

To the extent that the present Office Action or any future Office Action intends to rely on inherency to support a claim rejection, Applicant respectfully traverses, respectfully requests provision of proper evidence supporting such rejection, and respectfully requests a detailed

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explanation of how the “missing descriptive material is necessarily present, not merely probably or possibly present”, in any prior art reference cited to support such rejection.

**c. Missing Claim Limitations**

Claim 10 states, *inter alia*, yet the applied portions of the relied-upon references do not teach, “the second message comprising an object that comprises a code, a first possible value of the code indicative that bridging has been completed, a second possible value of the code indicative that a roll/bridge has been completed, a third possible value of the code indicative that a roll has been completed”.

Thus, even if there were proper evidence of obviousness presented in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in modifying the applied portions of reference relied upon in the Office Action (another assumption that is respectfully traversed), the applied portions of the reference relied upon in the Office Action, **as attempted to be modified**, still do not expressly or inherently teach every limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

**d. The Unfounded Assertions Fail to Bridge the Missing Claim Limitations**

Regarding the admittedly missing claimed subject matter of claim 6 of “the second message comprising an object that comprises a code, a first possible value of the code indicative that bridging has been completed, a second possible value of the code indicative that a roll/bridge has been completed, a third possible value of the code indicative that a roll has been completed”, the present Office Action asserts, at Page 7, “[t]his is strictly an implementation issue since Burns teaches messages are exchanged between the source and the destination during a bridge-and-roll operation, which is identical to the steps described in Paragraph 47 of Applicant’s specification”. As an initial matter, Applicant respectfully traverses this assertion as without any evidentiary basis. In addition, the reliance by the Office Action on such an unfounded assertion to bridge the

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evidentiary gap posed by the applied portions of the relied-upon references is improper. Such unfounded assertions are not permissible substitutes for evidence.

**e. Inadequate Evidence of Obviousness**

Applicant respectfully notes that the present Office Action fails to evidence the scope and contents of the prior art and identify the scope and contents to Applicant as required under *Graham*. The present Office Action also fails to even identify what "the pertinent art" is and notably fails to resolve the level of ordinary skill in the pertinent art. In addition, no evidence is presented that the present Office Action has considered objective evidence indicating obviousness or nonobviousness.

Applicant respectfully traverses the failure of the present Office Action to comply with the requirements of *Graham* and respectfully requests a withdrawal of the rejection of claim 10 or a non-final Office Action that complies therewith.

**f. Conclusion**

Because no *prima facie* rejection has been presented, Applicant respectfully requests a reconsideration and withdrawal of the rejection of claim 10. Applicant also requests a reconsideration and withdrawal of each rejection of each of claims 11-15, each of which ultimately depends from claim 10.

**6. Claim 11**

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness. Among other things, the present Office Action fails to provide proper evidence of obviousness as required under *KSR*.

Instead, regarding the proffered combination of Burns, Sasaki, and Kim, no evidence is provided whatsoever regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references are used in rejecting claim 11 in such a manner so

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as to arrive at the claimed subject matter of claim 11. Regarding the proffered combination of Burns, Sasaki, and Kim the present Office Action asserts, at Page 9:

[i]t would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the combination of Burns' and Sasaki's method to incorporate a method wherein the messages are RSVP messages. The motivation being to keep the link state information kept in the database of each node up to date and to provide a means to inform each node a feedback to indicate if the path has been setup or not as RSVP messages has such capability.

Applicant respectfully submits that these unsupported assertions provide no evidence of, from the perspective of one of ordinary skill in the art, a "rational underpinning, to combine the known elements in the fashion claimed in the patent at issue". Applicant reiterates that under KSR "rejections on obviousness grounds cannot be sustained by mere conclusory statements".

Thus, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 11. Accordingly, Applicants respectfully request withdrawal of the rejection of claim 11.

#### 7. Claim 13

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness. Among other things, the present Office Action fails to provide proper evidence of obviousness as required under KSR.

Instead, regarding the proffered combination of Burns, Sasaki, and Nagarajan, inadequate evidence is provided regarding why one having ordinary skill in the art would combine the applied portions of the relied-upon references are used in rejecting claim 13 in such a manner so as to arrive at the claimed subject matter of claim 13. Regarding the proffered combination of Burns, Sasaki, and Kim the present Office Action asserts, at Page 10:

[i]t would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Burns' and Sasaki's method to incorporate a method based on LMP. The motivation being Link Management Protocol (LMP) is ideal

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and optimal for using it in Optical Networks to compute the optical path as illustrated in Nagarajan's Column 3:63-67.

Yet this applied portion of Nagarajan does not support this assertion and merely states:

[i]llustratively, two diverse paths are computed. In step 505, the OTN topology is identified in each DCN node. (For optical path computation purposes, OTN topology information is passed to each DCN node through a link state 65 exchange protocol as known in the art (e.g., the Link Management Protocol (LMP)).

Applicant respectfully submits that this applied portion of Nagarajan does not state that "Link Management Protocol (LMP) is ideal and optimal for using it in Optical Networks to compute the optical path" as asserted by the present Office Action. Applicant respectfully submits that the generally unsupported assertion of the present Office Action provides insufficient evidence of, from the perspective of one of ordinary skill in the art, a "rational underpinning, to combine the known elements in the fashion claimed in the patent at issue". Applicant reiterates that under *KSR* "[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements".

Thus, the present Office Action fails to establish a *prima facie* case of obviousness regarding claim 13. For at least these reasons, Applicants respectfully request withdrawal of the rejection of claim 13.

**8. Claim 17****a. *Prima Facie* Criteria**

None of the applied portions of the references relied upon in the Office Action, whether considered alone or in combination, establishes a *prima facie* case of obviousness.

**b. Missing Claim Limitations**

Claim 10 states, *inter alia*, yet the applied portions of the relied-upon references do not teach, "reserving the resources along the restoration path if and only if the label switched path

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request comprises a shared reservation flag, the shared reservation flag indicative of whether other flags are needed to support restoration".

Thus, even if there were proper evidence of obviousness presented in the Office Action (an assumption that is respectfully traversed), and even if there were a reasonable expectation of success in modifying the applied portions of reference relied upon in the Office Action (another assumption that is respectfully traversed), the applied portions of the reference relied upon in the Office Action, **as attempted to be modified**, still do not expressly or inherently teach every limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness. Consequently, for at least the reasons mentioned above, reconsideration and withdrawal of these rejections is respectfully requested.

**c. The Unfounded Assertions Fail to Bridge the Missing Claim Limitations**

Regarding the admittedly missing claimed subject matter of claim 17, the present Office Action asserts, at Page 6, "[t]his is strictly an implementation issue as it is already shown that LU teaches resources on the restoration path can be reserved ahead of time prior to establishing the restoration path in paragraph 104". As an initial matter, Applicant respectfully traverses this assertion as without any evidentiary basis. In addition, the reliance by the Office Action on such an unfounded assertion to bridge the evidentiary gap posed by the applied portions of the relied-upon references is improper. Such unfounded assertions are not permissible substitutes for evidence.

**d. Conclusion**

Because no *prima facie* rejection has been presented, Applicant respectfully requests a reconsideration and withdrawal of the rejection of claim 10. Applicant also requests a reconsideration and withdrawal of each rejection of each of claims 11-15, each of which ultimately depends from claim 10.

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**IV. Next Office Action**

Because the present Office Action fails to set forth sufficient facts to provide a *prima facie* basis for the rejections, particularly by failing to present any grounds of rejection whatsoever for each of claims 14 and 15, any future rejection based on the applied references will necessarily be factually based on an entirely different portion of that reference, and thus will be legally defined as a "new grounds of rejection." Consequently, any Office Action containing such rejection can not properly be made final. *See, In re Wiechert*, 152 USPQ 247, 251-52 (CCPA 1967) (defining "new ground of rejection" and requiring that "when a rejection is factually based on an entirely different portion of an existing reference the appellant should be afforded an opportunity to make a showing of unobviousness vis-a-vis such portion of the reference"), and *In re Warner*, 379 F.2d 1011, 154 USPQ 173, 178 (CCPA 1967) (the USPTO "has the initial duty of supplying the factual basis for its rejection").



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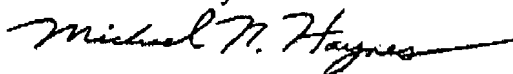
**CONCLUSION**

It is respectfully submitted that the application is in clear condition for allowance. Reconsideration, withdrawal of all grounds of rejection, and issuance of a Notice of Allowance are earnestly solicited.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. 1.16 or 1.17 to Deposit Account No. 50-2504. The Examiner is invited to contact the undersigned at 434-972-9988 to discuss any matter regarding this application.

Respectfully submitted,

Michael Haynes PLC



Michael N. Haynes  
Registration No. 40,014

Date: 05 June 2007

1341 Huntersfield Close  
Keswick, VA 22947  
Telephone: 434-972-9988  
Facsimile: 815-550-8850